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NTSB Order No. EA-4877

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 18th day of January, 2001

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-16140
v.)	
)	
CLINT R. MARLEY,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge Patrick G. Geraghty rendered in this proceeding on December 13, 2000, at the conclusion of an evidentiary hearing.¹ By that decision the law judge affirmed in part and reversed in part an emergency order of the Administrator revoking the respondent's inspection authorization for his alleged violations of sections 43.13(a) and (b) and 43.15(a)(1), (c)(1) and (c)(2) of the Federal Aviation Regulations ("FAR"), 14

¹An excerpt from the hearing transcript containing the initial decision is attached.

C.F.R. Part 43.² For the reasons discussed below, we will deny the appeal.³

The Administrator's November 16, 2000 Emergency Order of Revocation, the complaint in this matter, alleges, among other things, the following facts and circumstances concerning the

²The law judge dismissed the alleged violations of FAR sections 43.15(c)(1) and (2) and, for that reason, modified the Administrator's order to provide for a 10-month suspension (with a re-examination requirement), rather than revocation, of respondent's inspection authorization. The Administrator did not appeal that modification. FAR sections 43.13(a) and (b) and 43.15(a)(1) provide as follows:

§ 43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

§ 43.15 Additional performance rules for inspections.

(a) *General.* Each person performing an inspection required by Part 91, 123, 125, or 135 of this chapter shall--
 (1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements....

³The Administrator has filed a reply opposing the appeal.

respondent:

1. You are now, and at all times mentioned herein were, the holder of Mechanic Certificate No. 537669597, with inspection authorization.
2. On or about March 15, 2000, you completed an annual inspection on civil aircraft N6777S, a Cessna Model 150, and approved that aircraft for return to service.
3. At the time you approved N6777S for return to service, that aircraft was unairworthy in the following respects:
 - a. The left and right outboard elevator hinge attach bolts were not fully attached to the elevator.
 - b. The rudder forward spar was damaged and was contacting the vertical stabilizer.
 - c. The structure supporting the right elevator balance weight was damaged and had been improperly stop drilled.
 - d. The engine fuel primer lines and adjacent areas of the firewall were stained, showing evidence of leakage.
 - e. A bolt attaching the left aileron cable to a bellcrank was not securely fastened.
 - f. A spacer was missing from the elevator trim tab linkage.
 - g. The placards required for the elevator trim were not readable.
 - h. The placards or markings for the flap position indicator were not readable.
 - i. The fuel system shut off valve placard did not contain the required fuel quantity marking.

The law judge concluded that the Administrator's evidence established that the alleged discrepancies existed at the time of respondent's annual inspection and that the aircraft was unairworthy when he returned it to service. At the hearing, the respondent did not argue that the discrepancies were not present when the FAA inspector examined the aircraft, but maintained,

generally, that they did not exist when he examined the aircraft in connection with the annual inspection. The law judge for the most part did not credit respondent's account of the matter.

The subject aircraft had flown only 1.1 hours since respondent's inspection when its new owner complained about its condition and had another mechanic (with an inspection authorization) check it out several months later. The discovery of significant, uncorrected airworthiness problems, shown not to be attributable to the length of time following the annual inspection, after so little flight time constituted a strong circumstantial showing that a deficient annual inspection had been performed. Barring evidence indicating some other explanation for which respondent would not be responsible, the law judge had an adequate basis to sustain the charged violations.

On appeal, respondent argues that the law judge erred by disallowing certain testimony that he attempted to elicit from his one witness, the president of the repair station for which respondent is director of maintenance, Alpha Aviation. The testimony, according to respondent, would have demonstrated that the individual who inspected the aircraft for its current owner, and the individual who sold the aircraft to its current owner, both had an economic interest in discrediting respondent and his employer. This is so, according to respondent, because neither of those individuals was authorized to conduct commercial

transactions where respondent's business is located, Bellingham International Airport. We find no error in the law judge's view that this area of inquiry was not relevant.

When respondent sought to ask his employer to testify about the eligibility of the two individuals to do business commercially at the airport, the record already indicated the answer because counsel for respondent had previously asked one of the Administrator's witnesses, namely, the inspector who investigated the case, whether he knew that they lacked such authority. See Hearing Transcript at 52, 53. This is why, we would assume, the law judge believed that the suggestion that this circumstance gave these individuals a motive to discredit respondent was too speculative to be germane. See Hearing Transcript at 107. We agree with that assessment.⁴ If the respondent wanted to revisit the issue in order to bring out or develop associated information that he reasonably believed had a direct bearing on the probative value of the mechanic's report on the condition of the aircraft after respondent inspected it, he should have at least made a proffer to that effect to the law judge. His failure to do so precludes any conclusion that the

⁴To the extent that the respondent wanted to establish or suggest that a motive for discrediting him and his employer might lie in their actual or suspected involvement in or responsibility for the circumstance that the aircraft's prior owner and the mechanic could not engage in commercial operations at Bellingham, no such intent was expressed to the law judge. He cannot at this juncture fault the law judge for not admitting testimony whose potential relevance was not evident from the information given him.

law judge unfairly cut him off.⁵

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied; and
2. The initial decision and the emergency order of revocation, as modified by the law judge, are affirmed.⁶

HALL, Acting Chairman, HAMMERSCHMIDT, GOGLIA, BLACK, and CARMODY, Members of the Board, concurred in the above opinion and order.

⁵We note, in addition, that the respondent did not register an objection for the record to the law judge's ruling.

⁶It is not clear to us how the 10-month suspension and re-examination-prior-to-reinstatement requirement ordered by the law judge will be implemented. An inspection authorization must be renewed annually, in March. However, since the Administrator did not challenge this modification, we have no occasion to address it in this order.